% 04.07.2006

Present: Ms. Ranjana Srivastava, Advocate for the Petitioner.
Ms. Smita Shankar, Advocate for the Respondent.

\+ Arb. P. No.320/2005
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The Court should be constantly vigilant that it is common place for creditors to demand such endorsements as a pre-condition for release of payments. The Clause which is sought to be relied upon by the MCD to indicate a full and final settlement is in the printed form drafted by the MCD. Where Standard Form Agreements are to be construed, the presumption must be made in favour of the party who has not prepared or drafted the form.

The contention raised on behalf of the Objector/MCD is that an endorsement had been made on the Final Bill to the effect that payments were accepted in full and final settlement. The Court should be constantly vigilant that it is common-place for creditors to demand such endorsements or acknowledgments as a precondition for release of payments. In reality, the Debtor is left with no option but to unwillingly succumb.

In Schroeder Publishing Co. Ltd. v. Macaulay **[1974] 1 W.L.R. 1308,** standard form contracts were segregated into two types. In the first place contracts such as charter parties, insurance policies etc. were presumed to be reasonable whereas in the remaining group this presumption was absent largely due

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to the monopolistic character of the parties putting them forward. The following passage from the said judgment can be extrapolated and applied to so-called acknowledgments of full and final payment.

> "The terms of this kind of standard form contract have not been the subject of negotiation between the parties to it, or approved by any organisation representing the interests of the weaker party. They have been dictated by that party whose bargaining power, either exercised alone or in conjunction with others providing similar goods or services, enables him to say : 'If you want these goods or services at all, these are the only terms on which they are obtainable. Take it or leave it.' To be in a position to adopt this attitude towards a party desirous of entering into a contract to obtain goods or services provides a classic instance of superior bargaining power ... The fact that the appellants' bargaining power vis-a-vis the respondent was strong enough to enable them to adopt this take-it-or-leave-it attitude raises no presumption that they used it to drive an unconscionable bargain with him, but in the field of restraint of trade it calls for vigilance on the part of the court to see that they did not."

The question of whether full and final payment is made is itself an arbitrable dispute. I accordingly appoint Justice O.P. Dwivedi (Retired) as the Arbitrator. He shall be entitled to a Fee of Rs.60,000/-. Both the parties shall pay Rs.20,000/- each at the commencement of the proceedings and Rupees 10,000/- each

at the commencement of Final Arguments. Needless to state the learned Arbitrator shall indicate how these costs or any other costs are to rest.

Arbitration Application stands disposed of.

A copy of this Order be given DASTI to the parties.

July 04, 2006
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VIKRAMAJIT SEN, J.